



STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF A FILING BY ENRON)
TELECOMMUNICATIONS, INC.)
REQUESTING APPROVAL OF ITS)
B.P.U.- N. J. - NO. 1 TARIFF TO PROVIDE)
LOCAL EXCHANGE AND INTEREXCHANGE)
SERVICES WITHIN THE STATE OF)
NEW JERSEY)

ORDER OF APPROVAL

DOCKET NO. TT01030183

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated March 20, 2001, Enron Telecommunications, Inc. f/k/a Enron Broadband Services, Inc. (Enron or Petitioner) filed its initial proposed tariff, B.P.U. - N.J. - No. 1, with the Board of Public Utilities (Board) to offer local exchange and interexchange telecommunications services throughout the State of New Jersey. Enron has provided the Board with revisions to the rules and regulations section of its tariff as requested by the Board Staff in order to bring the proposed tariff into compliance with all applicable sections of the New Jersey Administrative Code and relevant requirements adopted by the Board.

Enron was previously authorized to provide all forms of facilities-based telecommunications service throughout New Jersey by Order dated December 21, 2000. See Order of Approval, I/M/O Petition of Enron Broadband Services, Inc. for Authority to Provide Local Exchange and Interexchange Telecommunications Services throughout New Jersey, BPU Docket No. TE00070503 (December 21, 2000). At present, Enron is proposing to provide the following services: Interoffice Local Transport Service and Dedicated Local Transport Service that offer transmission of digital signals at speed levels of DS-3 and above (44.736 Mbps).

The Division of Ratepayer Advocate, by letter dated August 13, 2001, recommends approval of this petition.

DISCUSSION

When the Board authorized Enron to provide local exchange service, Enron essentially became a local exchange telecommunications company¹ with regard to its local exchange services. N.J.S.A. 48:2-21.17. The local exchange services for which Enron seeks approval are subject to Title 48, and specifically, to the Telecommunications Act of 1992, N.J.S.A. 48:2-21.16 et seq. (the 1992 Act).

¹ A local exchange telecommunications company is defined to mean "a carrier authorized by the [B]oard to provide local telecommunications services." N.J.S.A. 48:2-21.17.

Thus, Enron's local exchange services, which may be considered to be competitive only according to the 1992 Act or a Board decision pursuant thereto, need only be reviewed by the Board to confirm that in fact it is competitive.² Once determined to be competitive, such services are not subject to regulation by the Board as to their rates, tolls, charges, rate structures, terms, and conditions of service, rate base, rate of return and cost of service. N.J.S.A. 48:2-21.19(a). However, the Board may require a local exchange or interexchange company to file and maintain tariffs for such competitive services. Ibid.

With regard to the services that are reflected in Enron's initial tariff, the Board FINDS the following services to be competitive because they are identical to or essentially the same as services already deemed competitive, either prior to the 1992 Act, in which case they are competitive by definition pursuant to N.J.S.A. 48:2-21.17, or by Board Order pursuant to N.J.S.A. 48:2-21.19. Enron's Interoffice Local Transport Service and Dedicated Local Transport Services are identical to VNJ's High Capacity Service which was approved as a Group I service in 1987. See Order, I/M/O the petition of New Jersey Bell Telephone Company for Approval of a Proposal for a Rate Stability Plan and Relaxed Earnings Surveillance for Certain Competitive Services, Docket No. TO8705398 (June 22, 1987).

In this petition, Enron seeks to enter the local exchange marketplace, which is now dominated by the incumbent local exchange carrier (ILEC), VNJ. While the Board is not now making a determination that the local exchange market in New Jersey is fully competitive, the Board is convinced that it is in the public interest to encourage entry by competitors in order to increase the number of market choices available to New Jersey consumers, to encourage entry by competitors in order to increase the number of market choices available to New Jersey consumers, and to encourage the transition of this market to one which is fully competitive. This view is fully in keeping with the New Jersey Legislature's finding that competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation. N.J.S.A. 48:2-21.16(b)(1). This view is also consistent with that of Congress, which passed the Telecommunications Act of 1996 (codified in scattered sections of 47 U.S.C. § 151 et. seq.) (the 1996 Act), in order to promote competition and reduce regulation in order to secure lower prices and higher quality service for American telecommunications technologies. See P.L. 104-104, 110 Stat. 56. Among the measures, which Congress incorporated into the 1996 Act to promote competition, is the provision which forbids the states from erecting barriers to entry into any intrastate telecommunications marketplace. Specifically, 47 U.S.C. §253(a) provides that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Moreover, should a state or local government statute, regulation or legal requirement be determined by the Federal Communications Commission (FCC) to violate the 1996 Act's prohibition against carriers to entry, the FCC is empowered to preempt the enforcement of such state statute, regulation or legal requirement. 47 U.S.C. §253(d). Not only is the application of a rate base/rate of return review of this filing not required by N.J.S.A. 48:2-21.2, but such a review, and indeed any requirement for a detailed cost justification of the rates proposed by

² The term competitive service is defined to mean "any telecommunications service determined by the [B]oard to be competitive prior to the effective date of [the 1992 Act] or determined to be competitive pursuant to sections 4 or 5 of the [the 1992 Act], or any telecommunications service not regulated by the [B]oard." N.J.S.A. 48:2-21.17.

Enron in this filing could be perceived as the imposition of a barrier to entry. Certainly, in a local exchange marketplace environment in which Enron has virtually no customers (and any customer whom it may successfully attract may easily obtain local exchange service again from the incumbent local exchange carrier), a detailed cost justification of Enron's local exchange service rates is not justified.

Any carrier seeking to challenge the ILEC will have to compete on several levels to attract and retain customers. With regard to price competition, the Board notes that Enron will offer its services at rates which it believes are competitive. These proposed rates cannot be considered unreasonable considering the competitive posture in which Enron finds itself, and the pro-competitive policies of both federal and State law.

Therefore, after thorough a review of the proposed tariff, the Board FINDS that, as amended, Enron's tariff B.P.U.-N.J. - No. 1 is reasonable and in accordance with law. The general terms and conditions of the proposed tariff have been reviewed by Staff, and have been modified by Enron to bring them into conformance with the Board's customer service regulations. Accordingly, for the reasons set forth above, the Board HEREBY APPROVES in full the proposed B.P.U.-N.J. - No. 1 tariff, as modified, to be effective as of the date of this Order.

DATED: 8/15/01

BOARD OF PUBLIC UTILITIES
BY:

(signed)
CONNIE O. HUGHES
ACTING PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

(signed)
CAROL J. MURPHY
COMMISSIONER

ATTEST:

(signed)
FRANCES L. SMITH
BOARD SECRETARY